



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

DEC 28 2007

REPLY TO THE ATTENTION OF:

AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Barbara Schaal
Everbrite, LLC
4949 S. 110th Street
P.O. Box 20020
Greenfield, Wisconsin 53220-0020

Dear Ms. Schaal:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves case docket number CAA-05-2008-0004 with Everbrite, LLC. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on DEC 28 2007.

Pursuant to paragraph 57 of the CAFO, Everbrite, LLC must pay the civil penalty within 30 days of the date the CAFO is filed. Your check must display the case docket number, CAA-05-2008-0004, and the billing document number, 2750803A002.

Please direct any questions regarding this case to Ignacio L. Arrázola, Associate Regional Counsel, (312) 886-7152.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Bonnie Bush".

Bonnie Bush, Chief
Air Enforcement & Compliance Assurance Branch (MI/WI Section)

Enclosure

cc: Don Gallo
Ignacio Arrázola

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. CAA-05-2008-0004
)	
Everbrite, LLC)	Proceeding to Assess a Civil Penalty
South Milwaukee, WI)	Under Section 113(d) of the Clean Air
)	Act, 42 U.S.C. § 7413(d)
Respondent.)	
_____)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Everbrite, LLC, a corporation doing business in Wisconsin.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

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Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in the CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Title V of the Act, 42 U.S.C. §§ 7661a-7661f, establishes an operating permit program for certain sources, including "major sources." Pursuant to Section 502(b) of the Act, 42 U.S.C. § 7661a(b), on July 21, 1992, EPA promulgated regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency. 57 Fed. Reg. 32295 (July 21, 1992). These regulations are codified at 40 C.F.R. Part 70.

10. 40 C.F.R. § 70.2 defines "major source," in part, as any stationary source belonging to a single major industrial grouping and that directly emits or has the potential to emit 100 tons per year or more of any air pollutant.

11. 40 C.F.R. § 70.7(b) states that no source subject to Title V may operate the source except in compliance with a Title V permit.

12. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), states that after the effective date of any permit program approved or promulgated under Title V of the Act, no source subject to Title V may operate the source except in compliance with its Title V permit.

13. On December 4, 2001, EPA granted full approval to the Wisconsin Title V operating permit program, effective on November 30, 2001. 66 Fed. Reg. 62951 (December 4, 2001).

14. The Wisconsin Department of Natural Resources (WDNR) issued Title V Permit No. 241094700-P01 to Respondent with an effective date of November 9, 2004. On October 3, 2005, Respondent submitted a permit revision request that the permit be revised as a synthetic minor source for federal hazardous air pollutants (HAPs). WDNR subsequently issued Title V Permit No. 241094700-P02 to Respondent with an effective date of February 27, 2006.

15. NR 439.04(1)(d) of the Wisconsin State Implementation Plan (SIP) states that the owner or operator of an air contaminant source to which NR 400 to 499 apply shall maintain any records relating to the emission of air contaminants which may be requested in writing by WDNR.

16. On August 15, 1994, EPA approved NR 439.04 as part of the federally enforceable Wisconsin SIP, effective September 14, 1994. 59 Fed. Reg. 41709 (August 15, 1994). On April 27, 1995, EPA made technical amendments to its approval. 60 Fed. Reg. 20643 (April 27, 1995). On June 30, 1995, July 28, 1995, April 9, 1996, and November 13, 2001, EPA approved revisions to NR 439.04 for the Wisconsin SIP. 60 Fed. Reg. 34170 (June 30, 1995), 60 Fed. Reg. 38722 (July 28, 1995), corrected by 61 Fed. Reg. 5307 (February 12, 1996), 61 Fed. Reg. 15706 (April 9, 1996), and 66 Fed. Reg. 56931 (November 13, 2001). On December 13, 2001, the latest revision of NR 439.04 became federally effective. 66 Fed. Reg. 56931 (November 13, 2001).

17. Condition 1.B.1.b.(2) of Respondent's Title V Permit No. 241094700-P01 and Condition 1.B.1.b.(2) of Respondent's Title V Permit No. 241094700-P02 each state that Respondent shall inspect the control devices for Process P31 prior to each day's use for correct filter placement, filter condition, and signs of excessive loading.

18. In accordance with NR 439.04(1)(d) of the Wisconsin SIP, Condition 1.B.1.c.(2) of Respondent's Title V permit No. 241094700-P01 and Condition 1.B.1.c.(2) of Respondent's Title V Permit No. 241094700-P02 each state that Respondent shall keep records of the date and initials of the person performing the inspections of Process P31 required by condition 1.B.1.b.(2).

19. Condition 1.G.1.b.(2) of Respondent's Title V Permit No. 241094700-P01 and Condition 1.F.1.b.(2) of Respondent's Title V permit No. 241094700-P02 each state that Respondent shall inspect the control devices for Process P60 prior to each day's use for correct filter placement, filter condition, and signs of excessive loading.

20. In accordance with NR 439.04(1)(d) of the Wisconsin SIP, Condition 1.G.1.c.(2) of Respondent's Title V Permit No. 241094700-P01 states that Respondent shall keep records of the date and initials of the person performing the inspections of Process P60 required by condition 1.G.1.b.(2).

21. In accordance with NR 439.04(1)(d) of the Wisconsin SIP, Condition 1.F.1.c.(2) of Respondent's Title V Permit No. 241094700-P02 states that Respondent shall keep records of the date and initials of the person performing the inspections of Process P60 required by condition 1.F.1.b.(2).

22. NR 439.04(5)(a)(2) of the Wisconsin SIP states that any owner or operator of a coating or printing line or operation subject to an applicable emission limitation shall collect and record for each coating or printing line or operation the volatile organic compound (VOC) content of each coating or ink, as applied, in units of pounds of VOC per gallon, excluding water.

23. In accordance with NR 439.04(5)(a)(2) of the Wisconsin SIP, Condition 1.D.1.c.(2).(c) of Respondent's Title V Permit No. 241094700-P01 and Condition 1.D.1.c.(2).(c) of Respondent's Title V Permit No. 241094700-P02 each state that, for Process 33, Respondent shall keep records of the VOC content of each ink or coating, as applied, in units of pounds of VOC per gallon, excluding water.

24. NR 422.145(4)(a) of the Wisconsin SIP states that the owner or operator of a screen printing unit subject to this section shall collect and record the daily average VOC emission rate from screen reclamation in kilograms per square meter (pounds per square foot) of screen reclaimed for each day of operation.

25. On July 28, 1995, EPA approved NR 422.145 as part of the federally enforceable Wisconsin SIP, effective September 26, 1995. 60 Fed. Reg. 38722 (July 28, 1995).

26. In accordance with NR 422.145(4)(a) of the Wisconsin SIP, Condition 1.D.1.c.(3).(a) of Respondent's Title V Permit No. 241094700-P01 and Condition 1.D.1.c.(3).(a) of Respondent's Title V Permit No. 241094700-P02 each state that, for Process 33, Respondent shall collect and record the daily average VOC emission rate from screen reclamation in pounds per square foot of screen reclaimed as calculated using the equation in Condition 1.D.1.a.(1)(d).

27. NR 439.03(1)(b) of the Wisconsin SIP states that the owner or operator of a source which has been issued an operating permit under s. 285.62, Stats., or an order under s. 285.13(2), Stats., shall submit the results of monitoring required by the permit or order no less often than every 6 months, or more frequently if required by WDNR.

28. On August 15, 1994, EPA approved NR 439.03 as part of the federally enforceable Wisconsin SIP, effective September 14, 1994. 59 Fed. Reg. 41709 (August 15, 1994). On April 27, 1995, EPA made technical amendments to its approval. 60 Fed. Reg. 20643 (April 27, 1995).

29. In accordance with NR 439.03(1)(b) of the Wisconsin SIP, Condition 1.H.7.b.(1) of Respondent's Title V Permit No. 241094700-P01 states that Respondent shall submit the results of monitoring required by this permit to WDNR every 6 months. The time periods to be addressed by the submittal are January 1st through June 30th (due by September 1st) and July 1st through December 31st (due by March 1st of the following year).

30. NR 439.03(1)(c) of the Wisconsin SIP states that after an operating permit has been issued to a source by WDNR, the owner or operator of the source shall annually, or more frequently if specified in an applicable requirement or in the permit, certify the source's compliance status with the operating permit.

31. In accordance with NR 439.03(1)(c) of the Wisconsin SIP, Condition 1.H.7.b.(2) of Respondent's Title V Permit No. 241094700-P01 states that Respondent shall submit an annual certification of compliance with the requirements of this permit to WDNR and EPA. The time period to be addressed by the report is from January 1st to December 31st (due no later than March 1st following the end of each reporting period).

32. Section 112(d) of the Act, 42 U.S.C. § 7412(d), authorizes EPA to promulgate regulations establishing emission standards for particular industrial sources that emit one or more of the HAPs listed in Section 112(b) of the Act in significant quantities.

33. Pursuant to Section 112(d) of the Act, EPA promulgated the National Emission Standards for HAPs for Surface Coating of Miscellaneous Metal Parts and Products (Subpart MMMM) on January 2, 2004. 69 Fed. Reg. 130 (January 2, 2004) (codified at 40 C.F.R. pt. 63, subpt. MMMM)

34. 40 C.F.R. § 63.3910(b) states that the owner or operator of an existing affected source must submit the initial notification required by Section 63.9(b) no later than 1 year after January 2, 2004.

35. In accordance with 40 C.F.R. 63.3910(b), Condition 1.H.4.a.(1) of Respondent's Title V Permit No. 241094700-P01 states that the Subpart M MMM initial notification shall be submitted not later than January 2, 2005.

36. Section 113(a)(1-3) of the Act, 42 U.S.C. § 7413(a)(1-3), authorizes the Administrator of EPA (the Administrator) to initiate an enforcement action whenever, on the basis of any available information, the Administrator finds that any person has violated or is in violation of a requirement or prohibition of, among others, any implementation plan or permit, Title I or Title V of the Act, or any rule promulgated, issued, or approved under Title I or Title V of the Act.

37. The Administrator may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

38. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

39. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

40. Respondent owns and operates a sign manufacturing facility at 315 Marion Avenue, South Milwaukee, Wisconsin (the "South Milwaukee facility").

41. Respondent's South Milwaukee facility emits pollutants, including particulate matter and VOC, to the air.

42. On June 19, 2006, WDNR conducted an inspection of Respondent's South Milwaukee facility. WDNR prepared a "Full Air Compliance Evaluation (FCE) Summary," dated June 29, 2006, that documents the inspection ("inspection report").

43. The inspection report states that Respondent did not keep records of the date and initials of the person performing the inspection of the control devices for Process P31 and Process P60 prior to each day's use until May 24, 2006.

44. Respondent's failure to keep records of the date and initials of the person performing the daily inspections of the control devices for Process P31 and Process P60 is a violation of Title V Permit No. 241094700-P01, Title V Permit No. 241094700-P02, Section 502(a) of the Act, 40 C.F.R. § 70.7(b), and NR 439.04(1)(d) of the Wisconsin SIP.

45. The inspection report states that Respondent did not calculate the VOC content of each ink and coating as delivered to each applicator in Process P33 until May 24, 2006.

46. Respondent's failure to keep records of the VOC content of each coating, as applied, in Process P33 is a violation of Title V Permit No. 241094700-P01, Title V Permit No. 241094700-P02, Section 502(a) of the Act, 40 C.F.R. § 70.7(b), and NR 439.04(5)(a)(2) of the Wisconsin SIP.

47. The inspection report states that Respondent did not maintain records showing the daily VOC emission rates per square foot of screen reclaimed in Process P33 until May 24, 2006.

48. Respondent's failure to record the daily average VOC emission rate from screen reclamation in Process P33 is a violation of Title V Permit No. 241094700-P01, Title V Permit No. 241094700-P02, Section 502(a) of the Act, 40 C.F.R. § 70.7(b), and NR 422.145(4)(a) of the Wisconsin SIP.

49. On June 27, 2006, Respondent submitted the semiannual monitoring report for the time period November 9, 2004 through December 31, 2004.

50. Respondent's failure to submit the semiannual monitoring report to WDNR by March 1, 2005 for the period from November 9, 2004 through December 31, 2004 is a violation of its Title V Permit No. 241094700-P01, Section 502(a) of the Act, 40 C.F.R. § 70.7(b), and NR 439.03(1)(b) of the Wisconsin SIP.

51. The inspection report states that WDNR did not receive an annual compliance certification from Respondent for the period November 9, 2004 through December 31, 2004.

52. On July 3, 2006, EPA received from Respondent an annual compliance certification, dated June 27, 2006, regarding Respondent's Title V Permit No. 241094700-P01 for the period November 9, 2004 through December 31, 2004.

53. Respondent's failure to submit an annual compliance certification to WDNR and EPA by March 1, 2005 for the period from November 9, 2004 through December 31, 2004 is a violation of its Title V Permit No. 241094700-P01, Section 502(a) of the Act, 40 C.F.R. § 70.7(b), and NR 439.03(1)(c) of the Wisconsin SIP.

54. On July 3, 2006, EPA received Respondent's annual compliance certification, dated June 27, 2006, regarding its Title V Permit No. 241094700-P01 for the period January 1, 2005 through December 31, 2005. The annual compliance certification states that Respondent submitted the initial notification for Subpart M MMM on August 29, 2005.

55. Respondent's failure to submit the initial notification for Subpart M MMM by January 2, 2005 is a violation of its Title V Permit No. 241094700-P01, Section 502(a) of the Act, 40 C.F.R. § 70.7(b), and 40 C.F.R. § 63.3910(b).

56. On June 28, 2007, EPA issued a Notice of Violation and Finding of Violation to Respondent regarding the violations described herein.

Civil Penalty

57. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and the Respondent's cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$36,106.

58. Within 30 days after the effective date of this CAFO, Respondent must pay a \$36,106 civil penalty by sending a cashier's or certified check payable to the "Treasurer, United States of America," to:

For checks sent by regular U.S. Postal Service mail:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Or, for checks sent by express mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

The check must note the following: the case name (*In the matter of Everbrite, LLC*), the docket number of this CAFO and the billing document number.

59. A transmittal letter stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Ignacio L. Arrázola, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

60. This civil penalty or any stipulated penalty is not deductible for federal tax purposes.

61. If Respondent does not pay timely the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

62. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

General Provisions

63. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

64. The CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

65. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 63, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

66. Respondent certifies that it is complying fully with its Title V Permit No. 241094700-P02.

67. This CAFO constitutes an "enforcement response" as that term is used in EPA's *Clean Air Act Stationary Source Civil Penalty Policy* to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

68. The terms of this CAFO bind Respondent, its successors, and assigns.

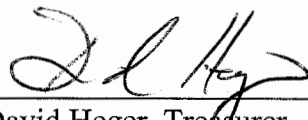
69. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

70. Each party agrees to bear its own costs and attorneys' fees in this action.

71. This CAFO constitutes the entire agreement between the parties.

Everbrite, LLC, Respondent

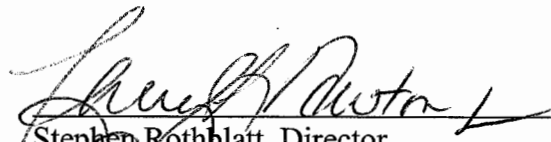
12-17-07
Date



David Heger, Treasurer
Everbrite, LLC

U.S. Environmental Protection Agency, Complainant

12/18/07
Date



Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

CONSENT AGREEMENT AND FINAL ORDER

In the Matter of:

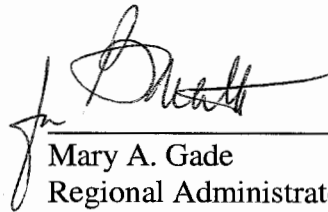
Everbrite, LLC

Docket No. CAA-05-2008-0004

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

12-21-07
Date



Mary A. Gade
Regional Administrator
U.S. Environmental Protection
Agency, Region 5

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DEC 21 2007 11:52 AM

In the Matter of:
Everbrite, LLC
Docket No. CAA-05-2008-0004

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order in this matter with the Regional Hearing Clerk (E-13J), United States Environmental Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. [], the second original to Respondent, addressed as follows:

Barbara Schaal
Everbrite, LLC
4949 S. 110th Street
P.O. Box 20020
Greenfield, Wisconsin 53220-0020

and that I delivered a correct copy by intra-office mail, addressed as follows:

Marcy Toney, Regional Judicial Officer (C-14J)
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

On this 28th day of December, 2007.

Shanee Rucker

Shanee Rucker
Air Enforcement & Compliance Assurance (MI/WI) Section

CERTIFIED MAIL RECEIPT NUMBER: 70010320000601862235

RECEIVED
REGIONAL HEARING CLERK
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